

EXHIBIT D

From: Kris Alderman
Sent: Wednesday, March 27, 2019 1:47 PM
To: Chad Derum; Douglas Crapo
Cc: Bentley J. Tolk; John Mackay (jmackay@rqn.com)
Subject: Intermountain v. ELAP Discovery

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Chad and Doug,

I look forward to continuing our conversation about discovery today. When we last spoke, I committed to pointing to some precedent holding that relevant information may be withheld on the basis that it is confidential and proprietary. In my view FRCP 26(b) sets forth a framework under which information must be relevant before it is discoverable and FRCP 26(c) provides additional grounds under which a party may resist discovery of relevant information for several specified reasons, one of which is that the information is confidential and proprietary.

I was also able to locate a 10th Circuit case, *Centurion Indus. v. Steurer*, 665 F.2d 323 (10th Cir. 1981), which confirms my understanding. Specifically, *Steurer* says that the party seeking discovery of confidential and proprietary information must establish that the information is both relevant and necessary. Then, if the party seeking disclosure carries that burden, the court must balance the need for the discovery with the harm that would result from disclosure. If disclosure is deemed appropriate after that balancing test then the court should ensure disclosure is made only pursuant to appropriate safeguards.

As we discussed last week, we do not believe ELAP's business plans are relevant, let alone necessary.

Thanks,
Kris

Kris Alderman

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